



The Attorney General of Texas

July 6, 1982

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Mr. Raymon L. Bynum
Commissioner of Education
Texas Education Agency
201 East Eleventh Street
Austin, Texas 78701

Opinion No. MW-485

Re: Whether section 2.07(b)(2)
of the Education Code relating
to assignment of salary by
married person is still valid

1607 Main St., Suite 1400
Dallas, TX. 75201-4709
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Dear Mr. Bynum:

Your question concerns section 2.07 of the Texas Education Code,
which provides in pertinent part as follows:

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(b) Any teacher's or school employee's
assignment, pledge, or transfer of his salary or
wages as security for indebtedness -- or any
interest or part of his salary or wages -- then
due or which may become due under an existing
contract of employment shall be enforceable only
under the following conditions:

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713/650-0666

....

(2) Any assignment, pledge, or transfer must
be in writing and acknowledged as required for the
acknowledgement of deeds or other recorded
instruments, and if executed by a married person,
it must also be executed and acknowledged in a
like manner by his or her spouse.... (Emphasis
added).

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San Antonio, TX. 78205-2797
512/225-4191

You ask whether the underlined requirement is valid under current
Texas marital property laws.

An Equal Opportunity/
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Article XVI, section 15 of the Texas Constitution provides in
relevant part that:

All property, both real and personal, of a spouse
owned or claimed before marriage, and that
acquired afterward by gift, devise or descent,
shall be the separate property of that spouse; and
laws shall be passed more clearly defining the

rights of the spouses, in relation to separate and community property....

Title 1 of the Family Code was enacted in 1969. Acts 1969, 61st Leg., ch. 888, at 2707. As amended in 1973, section 5.22 thereof provides in pertinent part as follows:

(a) During marriage, each spouse has the sole management, control, and disposition of the community property that he or she would have owned if single, including but not limited to:

(1) personal earnings;

....

(c) Except as provided in Subsection (a) of this section, the community property is subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney in writing or other agreement.

Under this section, each spouse has "sole management, control, and disposition" of his or her "personal earnings." Section 2.07(b)(2) of the Education Code requires, however, that an assignment, pledge, or transfer of a teacher's or school employee's salary or wages must, if executed by a married person, "also be executed and acknowledged in a like manner by his or her spouse." Your question is essentially whether, in enacting section 5.22 of the Family Code, the legislature impliedly repealed this requirement.

We begin by noting that our courts do not favor repeal by implication. Where two statutes enacted at different times are not inconsistent, repeal by implication occurs only if the later enactment "embrace[s] all the law upon the subject with which it deals" and is clearly intended as a complete replacement for former law. Motor Investment Company v. City of Hamlin, 179 S.W.2d 278, 281 (Tex. 1944). Accord, Standard v. Sadler, 383 S.W.2d 391 (Tex. 1964); Wintermann v. McDonald, 102 S.W.2d 167 (Tex. 1937). The rule governing repeal by implication was summarized in the following manner in Texas and N.O.R. Company v. W.A. Kelso Building Material Company, Inc., 250 S.W.2d 426, 430 (Tex. Civ. App. - Galveston 1952, writ ref'd n.r.e.):

[W]here there is no express repeal, the presumption is that in enacting a new law the legislature intended the old statute to remain in operation. So, a repeal by implication will be adjudged only when such result is inevitable or

was plainly intended by the Legislature. Further, the doctrine of implied repeal may not be invoked merely because of inconsistency or repugnance between earlier and later legislation. The court will endeavor to harmonize and reconcile the various provisions and if both acts can stand together, the rule is to let them stand.

Thus, we cannot conclude that the section 2.07(b)(2) requirement has been repealed by implication unless it is clear that the legislature "plainly intended" that result.

The section 2.07(b)(2) requirement was first imposed in 1939. As originally enacted, article 2883a, V.T.C.S., the predecessor of section 2.07, provided in relevant part that:

such assignment, transfer, or pledge be in writing and acknowledged in the same manner as required for the acknowledgment of a deed or other instrument for registration, and provided further that if such instrument be executed by a married person it shall also be executed and acknowledged by his or her spouse in such manner.

In 1939, article XVI, section 15 of the Texas Constitution provided that:

[a]ll property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband....

The 1939 version of article 4619, V.T.C.S., the predecessor of section 5.22 of the Family Code, provided in pertinent part that:

Section 1. All property acquired by either the husband or wife during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife; and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. During coverture the common property of the husband and wife may be disposed of by the

husband only; provided, however, if the husband shall have disappeared....

When the foregoing provisions are read together, it becomes apparent that in 1939, the following was true: (1) The personal earnings of a spouse, i.e., salary or wages, earned during marriage were part of the "common property" of the husband and wife; (2) As a general rule, the husband had the sole right to control said common property; (3) This rule was, however, subject to such exceptions as the legislature should create, see, e.g., Hawkins v. Britton State Bank, 52 S.W.2d 243 (Tex. 1932) (rents from wife's separate lands are community property but, under former articles 4614 and 4616, V.T.C.S., are under wife's exclusive management and control); and (4) article 2883a, V.T.C.S., created such an exception. Under this statute, if a married, male teacher or school employee wished to assign, pledge, or transfer all or part of his salary or wages as security for indebtedness, he was obliged, notwithstanding his general right to control the personal earnings of either spouse, to have his wife execute and acknowledge the instrument as well. See Hawkins v. Britton State Bank, supra (articles 4614 and 4616 create exceptions to general rule stated in article 4619).

The status of one's personal earnings is different today. Said earnings are now part of the "special community" property listed in section 5.22 of the Family Code. See Estate of Wyly v. Commissioner of Internal Revenue, 610 F.2d 1282 (5th Cir. 1980). A spouse's community interest in section 5.22(a) "special community" property is different from his or her general community interest, in the sense that although the other spouse owns an undivided one-half interest in the property, the spouse with the special community interest has the sole power of management, control and disposition of it. Estate of Wyly, supra.

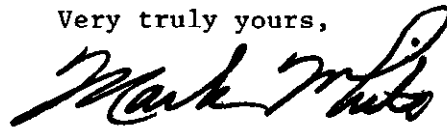
In support of the contention that section 5.22 of the Family Code impliedly repealed section 2.07(b)(2) of the Education Code, it is urged that the section 2.07(b)(2) requirement is at odds with the philosophy expressed in section 5.22(a), viz., that each spouse should have the "sole" right to manage his or her personal earnings. As we have shown, however, the general rule in 1939 was that husbands had the "sole" right to manage the common property of the marriage, including the spouses' personal earnings, but this did not prevent the legislature from creating the exception then embodied in article 2883a and now found in section 2.07(b)(2). Admittedly, given section 5.22 of the Family Code, section 2.07(b)(2) now operates as a limitation upon the management rights of either spouse, not just the husband; nevertheless, we conclude that the section 2.07(b)(2) requirement is, at least in theory, no more inconsistent with the philosophy expressed in section 5.22 of the Family Code than the article 2883a requirement was with the concept underlying article 4619.

The legislature was free in 1939 and is free now to define the rights of spouses with respect to their community property. Tex. Const. art. XVI, §15. It exercised that right in 1939 when, through the enactment of article 2883a, it qualified a husband's otherwise broad power to manage common property. The article 2883a requirement has been on the books in one form or another since 1939. In light of this, we cannot conclude that the legislature "plainly intended" to repeal the requirement when it enacted section 5.22 of the Family Code.

S U M M A R Y

Section 5.22 of the Texas Family Code did not impliedly repeal section 2.07(b)(2) of the Texas Education Code.

Very truly yours,



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